

Instructions for Using the Model Chapter 13 Plan of the Northern District of Illinois (3/1/02)

Introduction

These instructions provide a step-by-step guide for using the Model Chapter 13 Plan adopted by the bankruptcy judges of the Northern District of Illinois. Statutory references are to the Bankruptcy Code (Title 11, U.S.C.). The model plan is designed to accomplish several purposes:

- to set out clearly the rights and responsibilities of all of the parties affected by the plan—debtors, creditors, and the trustee;
- to present, in a uniform manner, the basic information needed to determine whether the plan is confirmable;
- to provide an internal check of feasibility;
- to provide for treatment of claims consistent with the provisions of the Bankruptcy Code;
- to allow for changes to any of the model provisions, as long as clear notice is given that changes are being made.

Two special features of the model plan should be particularly noted. First, to change a provision of the model plan, *a check must be placed in a notice box at the beginning of the plan and the changes must be set forth in Section G.* The other provisions of the model plan must be left intact, even if they are overridden by changes made in Section G. If these steps are not taken, changes to the model provisions will not be effective. Second, a key component of the model plan is the summary on the final page. This summary allows easy access to the major provisions of the plan and a check on feasibility.

General Instructions

1. The model plan is available in two different formats. A “manual” version may be obtained from the clerk’s office or downloaded from the court’s website. This version simply provides blank spaces and check boxes to be completed by hand with a typewriter. Alternatively, an “automated” version may be downloaded from the website. Data may be entered into this version by computer, using Adobe Acrobat, and it is possible to move to each place in which data must be entered simply by using the tab key (with check boxes filled in by using the space bar). Most of the computations required by the plan will be performed automatically on data entered in this way. Additionally, commercial services may make

available software packages that incorporate the model plan.

2. Throughout the plan, each paragraph with blank spaces should be completed. If the information required by the paragraph is inapplicable, that fact should be indicated with “N/A” (not applicable). If the amount for a blank space is zero, that fact should be indicated by entering “0” or “—”.

3. Throughout the model plan (and in these instructions), the word “debtor” is understood as including both of the debtors in a joint case. Thus, when the plan is used in joint cases, it is not necessary to change the word “debtor” to “debtors.”

4. It is permissible, though not mandatory, to state amounts of money in full dollars, rounding where necessary to avoid cents. The automated version of the plan performs such rounding.

Caption and Notice Box

The caption of the model plan provides blanks for the name of the debtor and the case number, as well as check boxes to indicate whether the plan is the first one filed in the case (the “Original Chapter 13 Plan”) or a subsequent one (a “Modified Chapter 13 Plan”). The blanks should be filled out and one of the boxes must be checked. The check box for “Modified Chapter 13 Plan” is followed by a blank for the date on which the modified plan is filed; this blank must be completed whenever the “Modified Plan” box is checked. In the upper right hand corner of the caption is a list of the Standing Chapter 13 Trustees for the Northern District of Illinois; if the identity of the trustee who will be administering the plan is known at the time of filing, a check mark should be placed in the blank preceding that trustee’s name. Following the caption is the notice box for changes to the model plan, which must be checked if changes are included in Section G.

A. Budget items

This section provides basic information needed to determine the appropriateness of plan payments and feasibility, restating information provided in Schedules I and J or provided by the debtor. An independent investigation by debtor’s counsel is not required.

Paragraph 1 requires a statement of the number and age of the persons in the debtor’s household, including the debtor, and a statement of total monthly household income. This information must be consistent with the information provided in the debtor’s Schedule I. In particular, total monthly household in-

come must be the “total combined monthly income” set out on Schedule I.

Paragraph 2 requires a statement of the total monthly household expenses, as well as a statement of monthly disposable income. The expenses must be in the amount of the “total monthly expenses” stated on Schedule J, and the disposable income amount must be at least as much as the proposed monthly plan payments (since otherwise the plan would not be feasible). On the other hand, if the disposable income is more than the monthly plan payments, the plan may be subject to a “best efforts” objection pursuant to § 1325(b).

Paragraph 3 should be filled out if the debtor is making charitable contributions (such as church offerings), reflected on Schedule J. The amount of the contribution must be in the same amount as that listed in Schedule J, and the duration of the contributions prior to the bankruptcy filing should be stated as represented by the debtor. If no charitable contributions are being made, “N/A” should be entered in the blank spaces.

B. General

This section sets out a number of general provisions that are commonly found in the plans currently in use. If there are any paragraphs in this section that are to be altered or omitted, the notice box at the beginning of the plan must be checked and the modification must be listed in Section G.

Paragraph 3 deals with the release of liens on personal property, such as secured automobile loans, and presents two options. The first box provides for release of lien only after the creditor has received all payments due under the plan on account of the claim secured by the debtor’s property— including payments on account of any portion of the claim that has been “stripped down” under §§ 506(a) and 1325(a)(5). The second box provides for release of lien after the creditor has received all payments on account of the secured portion of the claim resulting after such a stripdown. One of the boxes must be marked for any plan involving a stripped down lien on the debtor’s property. This paragraph does not refer to, or have any impact on, claims secured only by a lien on the debtor’s principal residence, which are covered by paragraph 2 (providing for maintenance of current payments and cure of default, as allowed under § 322(b)(2)).

C. Direct payment of claims by debtor

This section deals with direct payments from the debtor to prepetition creditors. Such payments are often referred to as “payments outside the plan,” but, more accurately, they are payments made pursuant to

the plan, with the debtor, rather than the trustee, as disbursing agent. The section allows a choice between the two most common arrangements. The first box provides for no direct payments by the debtor—that is, all payments of prepetition debts will be made by the trustee, from funds paid by the debtor to the trustee. The second box provides that the debtor will make current mortgage payments—adjusted as necessary for changes made after filing the case—directly to one or more holders of mortgages on the debtor’s principal residence. Such changes may include chargeable costs of collection incurred by the mortgage holder after the bankruptcy filing. *One of these boxes must be marked*, unless special provisions are set out in Section G (and a check placed in the notice box at the beginning of the plan). If the second box is marked, the blank spaces for the name and current monthly payment must be filled out for each mortgage holder receiving direct payments, including second or third mortgages. A separate page should be used to list more than two mortgagees. Finally, the amount of any of these direct payments must be as stated in the “home mortgage payment” line of Schedule J.

D. Payments by debtor to the trustee

This section defines the payments that the debtor will make to the trustee. *Paragraph 1* sets out the initial payment terms, specifying a monthly payment for a particular number of months. If the payments are proposed to change during the term of the plan, the bracketed phrase should be completed. For example, Paragraph 1 might be completed as follows: “The debtor will pay to the trustee \$250 monthly for 24 months [and \$ 500 monthly for an additional 12 months], for total plan payments of \$12,000.” If more complex payment terms are proposed (such as suspension of payments during certain periods of the year) these should be set out in Section G. The total payments to be made during the initial plan term must be listed on Line 1 of Section H (the summary on the last page of the plan). The “automatic” version of the plan both calculates the total payments from data listed in Paragraph 1 of Section D and places it on the proper line of Section H.

Paragraph 2 deals with two situations in which the initial plan term may change. First, for plans that specify a minimum payment of general unsecured claims (plans in this district have often provided for a 10% minimum payment), the initial term may not provide enough funds for the minimum payment. In this situation, the debtor is required to make additional plan payments, during the maximum plan term provided by law, that would allow the minimum payment to be made. Second, in some situations, the initial term may provide more than enough funds to pay all claims

in full. In this situation, it is specified that the plan will conclude upon full payment of claims.

E. Disbursements by the trustee

This section of the model plan sets out the amounts that the trustee must pay, from the funds contributed by the debtor, on each type of claim. It does not specify the order of priority of the payments—that is governed by Section F. Nine different types of payments are specified in Section E, listed in Paragraphs 1 through 9. The payments in these categories must be reflected on the appropriate line of Section H, as directed in the plan. The automated version of the plan performs this task for all but Paragraphs 8 and 9, which must be entered manually.

Paragraph 1 requires an estimate of the total fees to be paid to the trustee over the term of the plan. These fees should be determined by multiplying total plan payments (as specified in Section D, Paragraph 1), by an estimated trustee percentage. Each standing Chapter 13 trustee is allowed an individual percentage fee—which may be different from the percentage fee allowed to other trustees—and the fee may change over time, up to a statutory maximum of 10%. The estimated fee should be at least the highest fee that is currently charged by any trustee to whom the case may be assigned. However, it would also be appropriate to calculate the fee based on the statutory maximum of 10%, and there may be a benefit to using the 10% figure—since the trustee’s fee can never exceed this amount, the estimated fees would always be sufficient to cover the fees actually assessed by the trustee, avoiding any feasibility problem.

Paragraph 2 requires a statement of the amount of attorney’s fees proposed to be paid each month through the trustee, as well as an estimate of total attorney’s fees to be paid through the trustee. Since fees must be approved by the court, these amounts are estimates, subject to court order. If no fees are expected to be paid through the trustee (as in pro bono cases or in cases where fees were paid in full before filing), then “0” should be entered. (Some judges require a fee application pursuant to § 330 even if fees are paid in advance.)

Paragraph 3 specifies current mortgage payments to be made by the trustee, beginning with the first payment due after filing. The blank spaces in this paragraph should be filled in with the name of the mortgage holder to be paid and the amount of the monthly payment. If more than two mortgagees are to be paid, the additional mortgagees should be listed on a separate page. The paragraph provides that changes to the payment amounts—due to matters such as variable interest rate, escrow adjustments, or collection costs incurred after the bankruptcy—will be made if

notice from the mortgage holder is given to the trustee at least 14 days before the change becomes effective. This notice can be given directly by the mortgage holder (in which case the trustee is to notify the debtor prior to making the change), or indirectly, by the debtor serving the trustee with a notice received from the mortgage holder. If no mortgage payments are to be made by the trustee, “NA” should be placed in the first blank.

Paragraph 4 specifies the treatment of any mortgage arrearages to be paid through the plan. ***The amounts set forth here will control how much is paid in mortgage arrearages, regardless of any amount stated in a proof of claim filed by the mortgage holder.*** For each mortgage arrearage, the mortgage holder and the amount of the arrearage must be specified, and then two choices must be made. First, the appropriate box must be marked to indicate whether the arrearage is to be paid pro rata with other secured claims or by a fixed (“set”) monthly payment. Second, the appropriate box must be marked to indicate whether or not interest is to be paid on the arrearage claim. If interest is payable, the rate must be specified. All arrearage claims must be dealt with in this paragraph. If the number of arrearage claims exceed the available lines, additional entries must be listed on a separate page. If no mortgage arrearages are to be cured through the plan, “NA” should be placed in the first blank.

Paragraph 5 specifies the treatment of secured claims other than the mortgage claims previously dealt with. All of the remaining secured claims against the debtor must be treated in this paragraph—if necessary, additional entries must be made on a separate page to allow each secured claim to be listed. For each of the secured claims listed, three things must be done.

- First, the creditor and the collateral have to be identified.
- Second, the amount of the claim to be treated as secured under § 506(a) must be specified. This is a critical feature of the model plan, different from current practice: *secured claim valuation will be specified by the plan, not by the creditor’s proof of claim.* For example, if the total debt owed to an auto creditor is \$15,000, but the auto is valued at \$10,000 in a confirmed plan, the auto lender will be paid \$10,000 on its secured claim, even if it files a proof of claim asserting that the entire \$15,000 is secured. To the extent that a proof of claim exceeds the secured amount established by a confirmed plan, the claim will be treated as unsecured. Thus, all collateral values will be fixed at the confirmation of the plan. If a secured creditor disagrees with the valuation in the plan, the creditor will have to object to confirmation. This

change follows the decision in *Adair v. Sherman*, 230 F.3d 890 (7th Cir. 2000), which makes confirmation determinative of secured claim values. Since creditors receive a copy of the plan as part of the notice of the commencement of the case sent by the Bankruptcy Clerk, the values in the plan will constitute the notice to the secured creditors of the proposed treatment of their claims. The collateral values in the plan must correspond to the values listed in Schedules B and D.

- Third, the interest to be paid on the secured claim must be specified. (If no interest is to be paid, a “0” must be entered in the appropriate blank space).

Finally, if a fixed monthly payment (a “set” payment) is to be made on the claim, the appropriate box must be checked, and the amount of the fixed payment must be specified. Claims for which the box is not checked will be paid pro rata with other secured claims.

Paragraph 6 requires a specification of the total amount of non-attorney priority claims. This should be the total of all debts listed on Schedule E.

Paragraph 7 deals with any nonpriority unsecured claim that is to be paid differently from the other nonpriority unsecured claims. The reason for the different treatment must be stated, in order to address concerns about unfair discrimination under § 1322(b)(1). Thus, for example, the paragraph might be completed by stating that the claim of a specified creditor is to be paid at the rate of 100% because the claim was cosigned.

Paragraph 8 allows a choice (by marking one of two boxes) between the two most common options for treating general unsecured claims. General unsecured claims (or “GUCs” as the model plan refers to them) are the unsecured claims that remain after priority claims and specially classified unsecured claims have been dealt with. The two choices are payment in full, or payment at a specified minimum percentage. If the second choice is made, the minimum percentage should be entered in the blank space. (If no minimum payment is being proposed, “0” should be entered.) If either full payment or a minimum percentage is specified, the debtor is required to make plan payments after the initial term of the plan, if necessary to provide for the payment of GUCs at the proposed rate. See the discussion of Section D, Paragraph 2, above.

Different treatment of GUCs might be proposed—such as a fixed percentage plan, which might last less than three years (and hence be objectionable under the “best efforts” test of § 325(b)). If any such treatment is proposed, different from the three options for which check boxes are provided, that treatment

must be specified in Section G, and the notice box at the beginning of the plan must be checked.

Paragraph 9 states whether interest will be paid on unsecured claims, and, if so, at what rate. Interest may be required in order to satisfy the best interests test of § 325(a)(4). (Under this Code provision, if the debtor has sufficient equity in nonexempt assets to pay all debts in full, interest is required to compensate the creditors for not receiving full payment at the time of confirmation.) Interest may also be required under the “best efforts” test of § 325(b). Interest should only be specified if general unsecured claims are being paid in full, pursuant to Paragraph 8.

F. Priority

This section lays out the priority for disbursements from the trustee. This order of priority is largely consistent with current practice. However, all claims with fixed monthly payments (“set” payments), including current mortgage payments, are provided with the same priority. Any change from this order of priority—for example, a provision that one creditor with a fixed monthly payment have priority over other creditors receiving fixed payments—must be clearly set out in Section G, with a check in the notice box at the beginning of the plan.

G. Special provisions

As has been previously stated, this section is to be used whenever there is a deviation from the model plan. In order to use this section, the first step is to check the notice box at the beginning of the plan. This box *must* be checked if there are changes listed in Section G. Any change in this section is ineffective if the box is not checked. Any change must be listed fully and clearly and, if the change relates to a specific creditor, that creditor must be listed by name (i.e. not simply “automobile”). If changes are made that cannot fit in the space provided in the model plan, a statement should be made in the space provided that the changes continue on a separate sheet, which should clearly identify the changes that are part of Section G.

H. Summary of payments to and from the trustee

The final section provides a summary of how the payments to made by the debtor will be distributed by the trustee. This section must be completed in order for the plan to be recommended by the trustee or confirmed by the court; it is an essential part of the notice given to creditors. Most of the required calculations are automatically performed in the automated version of the model plan.

Line 1 is simply the total of plan payments proposed to be made during the initial term of the plan, as set forth in Section D, Paragraph 1.

Lines 2(a) through 2(g) list the seven types of claims other than general unsecured claims, and require the estimated total payments on each type to be stated. These amounts come from the treatment of the seven types of claims specified in Paragraphs 1 through 7 of Section E. The payments on these seven types of non-GUC claims are then totalled on *Line 2(h)*.

Line 3 states the amount of plan payments estimated to be available for payment of general unsecured claims (and interest on all unsecured claims); this amount is obtained by subtracting the total of non-GUC payments (*Line 2(h)*) from the total plan payments (*Line 1*).

Lines 4(a) through 4(g) provide a calculation of how much (if any) debtor payments will be required after the initial plan term. Both a minimum payment of general unsecured claims (GUCs) and payment of interest on all unsecured claims may result in required payments in excess of those made during the initial term. *Line 4(c)* calculates the anticipated minimum payment of GUCs, *Line 4(e)* adds this to any anticipated interest payments, and *Line 4(g)* indicates the extent to which the payments made during the initial term are expected to be insufficient to make the minimum GUC payments and interest. As stated in *Line 4(b)*, general unsecured claims include unsecured deficiency claims resulting from the application of §506(a) to secured claims. In many cases, the initial plan term payments will be sufficient to pay any minimum GUC percentage and any interest on unsecured claims. In such a situation, *Line 4(g)* would be zero or a negative number, the plan would be feasible, and *Lines 5(a) through 5(c)* would be inapplicable (and should be filled out with “N/A”). If *Line 4(g)* shows a positive number, then additional payments are required, and *Lines 5(a) through 5(c)* must be completed.

Finally, *Lines 5(a) through 5(c)* provide a calculation of whether payments available after the initial term can satisfy any insufficiency shown on *Line 4(g)*. *Line 5(a)* sets out the total additional payments available each month after the initial term—that is, the debtor’s plan payment, less trustee’s fees and any current mortgage payments being made by the trustee (since such payments would not be available to pay general unsecured claims or interest). *Line 5(b)* indicates the number of months during which such payments could be made. For example, if the initial plan term was 36 months, 24 months would be available (since, under § 1322(d), the maximum plan term is

five years, or 60 months). *Line 5(c)* multiplies the funds available each month by the number of months to obtain the total payments available after the initial plan term. As long as this amount is greater than any insufficiency shown on *Line 4(g)*, the plan is feasible.

Sample plan.

The court’s website sets out a sample of the automated version of the model plan, completed in accord with these instructions.